

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

SEP 22 2017

JUAN MANUEL RUIZ DEL VALLE,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent.

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3:16-CV-1899-B  
3:15-CR-0037-B



**FINDINGS, CONCLUSIONS AND RECOMMENDATION**  
**OF THE UNITED STATES MAGISTRATE JUDGE**

This cause of action was referred to the United States Magistrate Judge pursuant to the provisions of Title 28, United States Code, Section 636(b), as implemented by an order of the United States District Court for the Northern District of Texas. The Findings, Conclusions and Recommendation of the United States Magistrate Judge follow:

I.

Petitioner filed this petition to vacate, set-aside, or correct sentence pursuant to 28 U.S.C. § 2255. Petitioner pled guilty to illegal reentry after removal under 8 U.S.C. § 1326(a) and (b)(2). On October 15, 2015, the district court sentenced him to 86 months in prison. On June 21, 2016, the Fifth Circuit Court of Appeals affirmed. *United States v. Del Valle*, 653 Fed. App'x 249 (5<sup>th</sup> Cir. 2016).

II.

On June 22, 2016, Petitioner filed the instant § 2255 petition, and on July 14, 2016, he filed an amended petition. Petitioner claims his sentence should be vacated based on the Supreme Court's decision in *Johnson v. United States*, \_\_\_ U.S. \_\_\_, 135 S.Ct. 2551 (2015),

which held that the residual clause of the Armed Career Criminal Act's ("ACCA") "violent felony" definition is void for vagueness.

Petitioner, however, was not sentenced under the ACCA. Instead, his sentence was enhanced under § 2L1.2(b)(1)(A)(ii) of the sentencing guidelines because he was previously deported after being convicted of a crime of violence.

Under the Supreme Court's recent decision in *Beckles v. United States*, \_\_\_ U.S. \_\_\_, 137 S.Ct. 886, 892 (2017), the sentencing guidelines are not subject to a challenge for vagueness under *Johnson*. The Court stated:

Unlike the ACCA, however, the advisory Guidelines do not fix the permissible range of sentences. To the contrary, they merely guide the exercise of a court's discretion in choosing an appropriate sentence within the statutory range. Accordingly, the Guidelines are not subject to a vagueness challenge under the Due Process Clause. The residual clause in § 4B1.2(a)(2) therefore is not void for vagueness.

*Id.* Petitioner's claims under *Johnson* are therefore without merit, and his petition should be denied.

### III.

For the foregoing reasons, the Court recommends that the motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 be denied.

Signed this 22 day of SEP, 2017.

  
PAUL D. STICKNEY  
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND  
NOTICE OF RIGHT TO APPEAL/OBJECT**

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).